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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

FILE: [redacted] Office: Miami Date: AUG 28 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office for review. The acting district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The acting district director determined that the applicant was inadmissible to the United States, pursuant to section 212(a)(6)(D) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(D). The acting district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a) of the Act states, in part, that aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

> (6) Illegal entrants and immigration violators --
>
> (D) Stowaways. Any alien who is a stowaway is inadmissible.

Section 101(a) of the Act, 8 U.S.C. § 1101(a), defines the term "stowaway:"

> (49) The term "stowaway" means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.

The Service record reflects that on October 27, 2001, the applicant arrived in San Juan, Puerto Rico, on board the *M/V Dawn Princess*. In a sworn statement before a Service officer on October 27, 2001, the applicant stated that he was assisted by "Ivan" in boarding the vessel in St. Lucia. The applicant further stated:

> I did not pay any money, I met this guy named Ivan, he is from Mexico. He was on the cruise, I met him in the morning, I spent a good part of the day showing him the Island of St. Lucia. Since I did not charge him anything for showing him the island, I asked him to assist me in boarding the ship. Ivan looked like me, he allowed me to use his identification card from the ship and I used it to enter the ship.

The applicant further stated that he did not present himself for inspection upon arrival at San Juan, Puerto Rico, and that "I just went down stairs and while I was in the receiving area a person from US Customs approached me and I showed him my Cuban passport, then he took me to a room where he handcuffed me and about an hour later two Immigration Inspectors came and took me in their custody."

The Board, in *Matter of M/V "South African Victory"*, 12 I&N Dec. 253 (BIA 1967), held that an intent to conceal one's self aboard a United States bound vessel for the purpose of obtaining passage thereon is an element essential to constituting an alien as a stowaway within the meaning of section 273(d) of the Act, 8 U.S.C. § 1323. The Board stated that it has been judicially held that a stowaway is one who conceals himself aboard an out going vessel for the purpose of obtaining free passage. The courts have also ruled it is quite clear that the word "stowaway" is used to indicate one who steals his passage. Likewise, it has been judicially stated that to justify the conviction of a person for stowing away on a vessel it is necessary to establish intent to go and remain on board without paying for a ticket and that accidental remaining on board does not suffice.

An alien is classified as a stowaway in the event that neither the arriving alien nor the carrier can produce any documentary evidence that the alien boarded the aircraft or vessel with the consent of the carrier. The applicant, in this case, has not provided evidence to establish that he boarded the vessel with the consent of the carrier. In fact, the applicant admitted that he boarded the vessel by using "Ivan's" ship identification card. Furthermore, the Service, on October 27, 2001, determined the applicant to be a stowaway.

The applicant was correctly classified as a stowaway. He is, therefore, inadmissible to the United States pursuant to section 212(a)(6)(D) of the Act. There is no waiver available to an alien found inadmissible under this section.

The applicant is ineligible for adjustment of status to permanent residence, pursuant to section 1 of the Act of November 2, 1966. The decision of the acting district director to deny the application will be affirmed.

ORDER: The acting district director's decision is affirmed.